

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
2.59.1705 pertaining to licensing)	AND ADOPTION
examination and continuing education)	
provider requirements, and the adoption of)	
NEW RULE I pertaining to records to be)	
maintained)	

TO: All Concerned Persons

1. On June 22, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-373 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1498 of the 2006 Montana Administrative Register, issue number 12.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has amended ARM 2.59.1705 exactly as proposed.

3. The division has adopted the following new rule as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (2.59.1710) RECORDS TO BE MAINTAINED (1) through (1)(b) remain as proposed.

~~(c) correspondence sent and received by the mortgage broker;~~

~~(d) (c) a record of any and all contact between the mortgage broker or loan originator and the with the borrower relating to the rate, terms, or conditions of the loan;~~

~~(e) (d) a copy of the evidence of insurance or insurance binder as required by the lender hazard insurance, which is adequate to cover replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;~~

(f) through (h) remain as proposed but are renumbered (e) through (g).

~~(i) (h) a copy of all documentation used to support the borrower's income as required by the lender;~~

~~(j) (i) a copy of all documentation used to support the borrower's assets as required by the lender;~~

(k) remains as proposed but is renumbered (j).

~~(l) (k) a copy of the policy of title insurance commitment on the property securing the loan; and~~

~~(m) (l) a copy of all closing documents, including closing instructions and the first three pages of the deed of trust, Good Faith Estimate and final Truth in Lending disclosure signed by the borrower.~~

(2) remains as proposed.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 32-9-125, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: Comments were received in regard to ARM 2.59.1705(13) stating that the fee increase in approving continuing education provider credit hours will be passed onto mortgage brokers and loan originators through their expense in renewing licenses. One comment suggested that the initial application fee remain \$350 and that each additional course be approved for \$100.

Response 1: The division acknowledges that the cost of increasing fees in approving continuing education credits may result in approved education providers passing on this fee increase to mortgage broker and loan originators. However, the cost of approving the continuing education credit hours should be commensurate with the time that an examiner allocates to the review and approval of those materials. On average it is necessary for the division's examiners to allocate two hours of review per each credit hour approved. It is reasonable for the division to increase the fee associated with approving these continuing education courses to \$50 for each credit hour approved.

Comment 2: Comments were received in regard to New Rule I(1)(k) stating that it was not common for mortgage brokers to receive a copy of the promissory note from title companies. One of these comments also stated that it would be burdensome for mortgage brokers to obtain a copy of the promissory note since it is an item that mortgage brokers have no control over.

Response 2: The division disagrees. The division cannot conduct a thorough review of residential mortgage loan files without reviewing a copy of the promissory note.

Comment 3: A comment was received in regard to New Rule I(1)(l) stating it is not common for mortgage brokers to receive a copy of the policy of title insurance, but only a copy of the title insurance commitment or binder.

Response 3: The division agrees and amends New Rule I(1)(l) accordingly.

Comment 4: A comment was received in regard to New Rule I(1)(l) stating that this rule should be amended to include a copy of the title insurance commitment on the property securing the loan.

Response 4: The division agrees and amends New Rule I(1)(l) accordingly.

Comment 5: A comment was received in regard to New Rule I(1)(m) stating it is not common for mortgage brokers to maintain copies of all closing documents, which include the loan closing instructions issued by the lender, the mortgage lender's

Good Faith Estimate, or the final Truth in Lending disclosure statement. The comment recommended that this rule be amended to include only closing documents that are typically prepared by mortgage brokers and closing documents that are routinely sent to mortgage brokers. The comment stated that the standard for these documents should include the Good Faith Estimate prepared by the mortgage broker, the initial Truth in Lending disclosure statement, any mortgage broker agreement or disclosure between the mortgage broker and the applicant, any disclosure that the mortgage broker has prepared and delivered to the applicant and a signed copy of the HUD-1 or HUD-1a Settlement Statement.

Response 5: The division acknowledges this comment and has amended this rule. The division notes that it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without a final copy of the Truth in Lending disclosure.

Comment 6: A comment was received in regard to New Rule I(1)(m) stating that it is not common for mortgage brokers to receive copies of closing instructions or closing documents signed by the borrower. The comment also states that it would be burdensome for mortgage brokers to retain all the documents set forth by this proposed rule. The comment recommends that this rule be revised to a copy of the note, Truth in Lending disclosure, first three pages of the deed of trust, and the final HUD-1.

Response 6: The division acknowledges this comment and has amended this rule. The division notes that it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without a final copy of the Truth in Lending disclosure.

Comment 7: Comments were received in regard to New Rule I stating that this rule would not protect consumers from misrepresentations, deceit, or fraud nor would it protect mortgage brokers from inaccurate allegations.

Response 7: The division disagrees. New Rule I sets forth which documents must be contained in a residential mortgage loan file. These documents are essential in performing an examination of a mortgage broker's business activity as well as to investigate any complaints made by a consumer relative to a brokered residential mortgage loan. The retention of these documents serves to protect both the interests of consumers as well as mortgage brokers and loan originators who conduct their business in accordance with state and federal laws.

Comment 8: Comments were received in regard to New Rule I stating that the retention of documents set forth by this rule would be time consuming and expensive. These comments stated that this rule would have a negative financial impact on mortgage brokers and loan originators if they had to spend more time on record retention and less time providing their services to borrowers.

Response 8: The division acknowledges that there may be some expense for mortgage brokers or loan originators to maintain the records set forth in New Rule I, but it cannot conduct a thorough examination of mortgage broker and loan originator residential mortgage loan files without this documentation.

Comment 9: A comment was received in regard to New Rule I stating that the retention of documents related to a borrower's personal information is in contradiction of Montana privacy laws, which require the destruction of a borrower's personal information.

Response 9: The division disagrees. The division is not aware of any state law that would require a mortgage broker to destroy documents set forth in New Rule I after a loan is closed.

Comment 10: Comments were received in regard to New Rule I(2) stating that this rule would provide authority to the division to investigate any bank account related to a mortgage broker's business activity. These comments also stated that 32-9-130(4)(a), MCA, only specifies loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

Response 10: The division disagrees. Pursuant to 32-9-130(4)(a), MCA, the department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee. New Rule I(2) does not expand department powers beyond what the department currently has under 32-9-130, MCA.

Comment 11: Comments were received in regard to New Rule I(1)(d) stating that it is not realistic for a mortgage broker or loan originator to be able to record any and all contact with a borrower.

Response 11: The division acknowledges this comment and has amended this rule to include only contact with the borrower that is relating to the rate, term, and conditions of the loan.

Comment 12: A comment was received in regard to New Rule I(1)(e) stating that this rule be amended to a copy of the evidence of insurance or insurance binder as required by the lender.

Response 12: The division agrees and amends this rule accordingly.

Comment 13: Comments were received in regard to New Rule I(1)(i) stating that documentation to support a borrower's income are not always required by a lender. One comment recommended that this rule be amended to a copy of all documentation used to support the borrower's income as required by the lender.

Response 13: The division agrees and amends this rule accordingly.

Comment 14: Comments were received in regard to New Rule I(1)(j) stating that documentation to support a borrower's assets are not always required by a lender. One comment recommended that this rule be amended to a copy of all documentation used to support the borrower's assets as required by the lender.

Response 14: The division agrees and amends this rule accordingly.

Comment 15: A comment was received in regard to New Rule I(1)(e) stating that it is unnecessary for mortgage brokers and loan originators to retain preliminary title reports or evidence of hazard insurance in their loan files since lenders will not fund loans without evidence of these items.

Response 15: The division agrees and amends this rule accordingly.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 28, 2006.